

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RUFUS SPEARMAN,

Petitioner,

CIVIL CASE NO. 05-40006

v.

THOMAS BIRKETT,

HONORABLE PAUL V. GADOLA
U.S. DISTRICT COURT

Respondent.

**ORDER DENYING PETITIONER'S MOTION FOR EXTENSION OF TIME AND
MOTION FOR APPOINTMENT OF COUNSEL**

Before the Court are Petitioner's motion for extension of time and motion for appointment of counsel. For the reasons below, the Court denies Petitioner's motions.

Petitioner filed an application for a writ of habeas corpus on January 10, 2005. On March 7, 2006, the Honorable Paul J. Komives, United States Magistrate Judge, issued a Report and Recommendation, recommending that this Court deny Petitioner's application for writ of habeas corpus. The Magistrate Judge also notified the parties that any objections to the Report and Recommendation must be filed within ten days of service. On March 31, 2006, because objections had not been filed within ten days, this Court accepted and adopted the Report and Recommendation.

Petitioner subsequently submitted two motions for extension of time to file objections to the Report and Recommendation. The Court granted Petitioner's requests and ordered Petitioner to submit his objections by August 31, 2006. Petitioner failed to submit his objections by that date. In a letter to the Court dated December 19, 2006, Petitioner indicated that he still had objections to the Report and Recommendation but was unable to articulate them at that time because he did not

have the necessary legal materials. On July 9, 2008, Petitioner filed another motion for extension of time to file his objections, alleging that he had lost his legal materials which prevented him from filing his objections.

Petitioner has had well over two years to file objections to the Report and Recommendation. Despite Petitioner's excuse that he has lost his legal materials, Petitioner has had plenty of time to articulate his objections to the Report and Recommendation. Consequently, the Court finds that Petitioner has failed to provide a sufficient reason for justifying his request for such a large extension of time. Petitioner's request for an extension of time is denied.

Petitioner has also filed a motion for appointment of counsel. There is no constitutional right to counsel in habeas corpus cases. *See Childs v. Pellegrin*, 822 F.2d 1382, 1384 (6th Cir. 1987). A habeas corpus petitioner may be appointed legal counsel if the Court finds that it is required in the "interests of justice." 18 U.S.C. § 3006A(a)(2)(B); Rule 8(c), Rules Governing Section 2254 Cases.

Here, Petitioner has not put forward any exceptional circumstances justifying appointment of counsel. Petitioner was able to adequately present his arguments in his original habeas corpus petition. It does not appear to the Court that denial of counsel will result in fundamental unfairness to Petitioner. Consequently, appointment of counsel is not required in the interests of justice.

ACCORDINGLY, IT IS HEREBY ORDERED that Petitioner's motion for extension of time [docket entry #32] is **DENIED**.

IT IS FURTHER ORDERED that Petitioner's motion for appointment of counsel [docket entry #31] is **DENIED**.

SO ORDERED.

Dated: September 4, 2008

s/Stephen J. Murphy, III for
HONORABLE PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that on September 4, 2008, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Debra M. Gagliardi, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Rufus Spearman.

s/Ruth A. Brissaud
Ruth A. Brissaud, Case Manager
(810) 341-7845